

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Honolulu, Hawaii)

DIAGNOSTIC LABORATORY SERVICES, INC. 1/

Employer

and

HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996, AFL-CIO

Petitioner

**37-RC-3928****DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time employees employed by the Employer at satellite locations on the Island of Oahu as lab assistants, medical technologists and medical lab technicians; excluding all other employees, couriers, supply clerks, confidential employees, professional employees guards/watchmen and supervisors as defined in the Act.

**DIRECTION OF ELECTION 6/**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

OVER

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996, AFL-CIO.

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB. Wyman-Gordan Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii, on or before **April 24, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **May 1, 2000**.

Dated April 17, 2000

at San Francisco, California

/s/ Robert H. Miller  
Regional Director, Region 20

- 1/ The Employer's name appears as stipulated by the parties at the hearing.
- 2/ The parties stipulated, and the record reflects, that the Employer, a subsidiary of Queen's Development Corporation, is a Hawaii corporation with places of business on the Island of Oahu where it is engaged in the business of operating a clinical laboratory. During the 12-month period ending February 29, 2000, the Employer derived gross revenues in excess of \$500,000 and received goods and supplies valued in excess of \$5,000 from points located outside the State of Hawaii. Based on the parties stipulation and the record, it is concluded that the Employer is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 3/ The parties stipulated that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated that there is no collective bargaining agreement covering any of the employees in the unit sought herein, and that there is no contract bar to this proceeding.
- 5/ By the instant petition, as amended at the hearing, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time lab assistants (phlebotomists), medical technologists, and medical lab technicians employed by the Employer at satellite locations on the Island of Oahu. The only issue presented herein is whether call-in employees should be included in the unit. The Employer contends that call-in employees should be excluded from the unit while the Petitioner takes the contrary view.

The Employer operates a clinical laboratory on the Island of Oahu that provides laboratory testing to assist health care professionals like physicians in diagnosing, treating and monitoring diseases. The Employer's administrative offices are located at 650 Iwelei Road where it also maintains its central laboratory. The Employer also operates 28 satellite offices on the Island of Oahu. The satellite offices collect specimens (i.e. draw blood and obtain urine samples) and perform a small menu of laboratory testing. The same type of lab tests performed at the satellite offices are also performed at the Employer's central laboratory. However, the central laboratory has specialized departments such as the microbiology department that handles cultures. This type of work is only done at the central laboratory.

The central lab operates two shifts and is open seven days a week. The satellite offices are open basically from 7 a.m. to 5 p.m. Monday through Friday and half a day on Saturday. Approximately 78 full-time and regular part-time employees work at the 28 satellite facilities. Under the Employer's employee handbook, full-time employees are defined as those employees who work a predetermined

schedule of 40 hours per week. Regular part-time employees are those who work at least 20 but less than 40 hours per week.

The Employer also has approximately 12 call-in employees assigned to work among the 28 satellite facilities. The basic function of the call-in employees is to cover vacations, sick days and days off for the regular full-time and part time employees. Under the Employer's employer handbook, call-in employees are defined as those who work an undetermined work schedule and do not have a regular position. These employees are called to work based on day-to-day operations in the labs. Thus, the scheduled hours of call-ins varies from week to week and from pay period to pay period.

The record reflects that call-in employees work along side and are paid according to the same wage scale and answer to the same supervisors as regular full-time and part-time employees. They are also held to the same standards and perform essentially the same duties as regular full-time and part-time employees. However, because of the intermittent and unpredictable nature of their work schedules, call-in employees are not be involved in projects that take or involve a lot of time such as instrument evaluations, project or procedure evaluations, correlation studies and ordering supplies.

The record reflects that for the most part, call-in employees are hired as call-in employees. However, there are on occasions where a regular employee may choose to work on call for whatever reason, such as going back to school or a desire to work a limited number of hours. At the time of their hire, call-in employees are told that they have no expectancy to work a minimum number of hours per week or a regular position or permanent employment. However, if a call-in desires to change his or her status after their hire, he or she will be given preference in hire to fill a posted position if he or she meets the qualifications and performance standards for the position.

The record reflects that call-in employees do not receive the same benefits as regular full-time and part-time employees. Thus, call-in employees are not eligible for and do not receive paid time off for vacation, sick leave, jury duty, bereavement leave or holidays. Call-in employees also are not eligible for the same health benefits as regular full-time and part-time employees. In this regard the record reflects that while regular full-time and part-time employees are given the option of choosing among three different health insurance plans to cover themselves and their families once a year at open enrollment and receive dental benefits, call-in employees are eligible only for statutory benefits required by the State of Hawaii i.e. prepaid health care for the individual employee, no benefit is provided for their family and they do not receive dental benefits. The record further reflects that to receive statutory benefits, call-in employees must qualify or pre-qualify by working at least 20 hours a week for four (4) consecutive weeks

and that the majority of the call-in employees at issue do not qualify for such benefits.

However, the record reflects that call in employees participate in the same 401(k) retirement plan as the Employer's regular full-time and part time employees.

The record reflects that the call-in employees at issue are supervised by the senior med techs and senior lab assistants at the various locations where they work. While the call-ins have designated supervisors, if they float, they report to the supervisor or manager of the location assigned for what ever period is worked. All employees wear name tags and the tags do not designate whether the employee is a call-in or regular employee.

As noted above, the record reflects that unlike regular employees, the Employer is not obligated to employ call-ins to work a minimum number of hours per week. Further, unlike regular employees, call-ins may reject an offer of work and are not required to be available for any minimum number of hours of work peer week or month to retain their call-in status. The record further reflects that most of the call-ins at issue are employed on a more regular basis with another employer.

In determining whether a petitioned-for unit of employees constitutes "an appropriate unit," the Board assesses a number of factors in order to determine whether the employees in the petitioned-for unit possess a community of interest. These factors include (1) the differences or similarities in wages compensation and benefits; (2) common supervision; (3) hours of work; (4) qualifications, training and job skills; (5) job functions; (6) frequency of contact with other employees; (7) functional integration and interchange with other employees; and (8) bargaining history. See Kalamazoo Paper Box Corp., 136 NLRB 134.

In determining whether on-call employees should be included in a bargaining unit, the Board considers the similarity of the work performed and the regularity and continuity of employment. S.S. Joachim and Anne Residence, 314 NLRB 1191, 1153 (1994) citing Trump Taj Mahal Casino, 306 NLRB 294, 295 (1992), enfd. 2 F.3d 35 (3d Cir. 1993). While the call-in employees at issue in the instant case, unlike regular employees, are not required to accept an assignment of work and do not have the same health plan as the regular employees, it is well settled that an employee's ability to reject work when offered and the lack of identical benefits are not determinative as to whether that individual's employment status so as to exclude him or her from the unit as a casual employee. 314 NLRB 1193 Fn. 5 citing Mid-Jefferson County Hospital, 259 NLRB 831 (1981).

In the instant case, the record establishes that the call-in employees at issue work along side, share common supervision with and essentially perform the same basis tasks under the same perform the same working conditions as the regular full-time and part time

employees whose inclusion in the unit is not in dispute. Further, the call-in employees have the same skills, are paid at the same rate and participate in the same 401(k) plan as the unit employees. Thus, the evidence establishes that the call-in employees share a community of interest with unit employees.

With regard to the regularity of the work of on-call employees, the Board finds this requirement is met when an employee has worked a substantial number of hours within the period of employment prior to the eligibility date. See Mid-Jefferson County Hospital 259 NLRB 831 (1981). Under its most widely used test, the Board has held that absent special circumstances, an on-call employee has a sufficient regularity of employment if the employee averages 4 or more hours per week for the last quarter prior to the eligibility date. Davis-Paxon Co., 185 NLRB 713 (1970). In Sisters of Mercy Health Corp., 298 NLRB 483 (1990), the Board found the Davis-Paxon test to be appropriate for determining the eligibility of the on-call employees in the health care industry. Accordingly, in the instant case I find that the call-in employees at issue herein will be included in the unit if they regularly average 4 hours or more of work per week during the quarter prior to the eligibility date.

- 6/ The Petitioner contends that the election herein should be conducted by mail ballot while the Employer takes the position that the election should be conducted by manual balloting. As the record evidence is not sufficient to determine this issue, an administrative determination will be made as to the appropriateness of a mail ballot election subsequent to the issuance of this decision.